



Fast Track Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC60-20-10 et seq.
Regulation title	Regulations Governing the Practice of Dentistry
Action title	Inspection fee
Document preparation date	12/17/07

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Board has acted to amend section 30 of its regulations to include a fee of \$350 for an inspection of a dental office.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On December 7, 2007, the Board of Dentistry took action to amend 18VAC60-20-10 et seq., Regulations Governing the Practice of Dentistry, through the fast-track regulatory process to add a fee for the inspection of a dental office as part of disciplinary process.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system and to set fees:

§ 54.1-2400 -General powers and duties of health regulatory boards
The general powers and duties of health regulatory boards shall be:

- ...
- 5. *To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
 - 6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title.*

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

In 2006, the Board of Dentistry adopted an amended fee schedule to address a growing deficit in its budget. As a part of the revenue and expenditure analysis, it was projected that the fee for an inspection of a dental office would be increased from \$200 to \$350 to reflect the actual cost of having an investigator conduct the inspection as ordered in a disciplinary proceeding. While other increased fees were included in the action that became effective January 10, 2007, the inspection fee was omitted. The inspection fee has been included in Board orders and was increased to \$350 as a part of the overall fee increase, so inclusion in Board regulations does not increase the fee for those dentists subject to an inspection.

The inclusion of the fee is necessary to ensure that the Board can recover its costs for the inspection. Otherwise, the Board will be required to increase other fees charged to licensees through renewal or application fees. Those practitioners who are the subject of a disciplinary proceeding should incur the cost for inspection, just as pharmacies and other facilities are charged an inspection fee, if required by regulation or by a disciplinary action. A fee that covers the actual cost for the inspection will enable the Board to order an inspection that it believes is

necessary to protect the health and safety of patients of the dentist in question without jeopardizing the balance between revenues and expenditures.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track process is being used to promulgate the amendments because there is general agreement with the addition of the inspection fee as proposed. The inspection fee is currently a part of the disciplinary order from the board whenever an inspection of a dental office is required. The action was unanimously supported by the members of the Board, and it is believed that there will be no objections raised.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The amendment includes a fee for \$350 for an inspection of a dental office in Section 30.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) The advantage to the public would be greater protection offered by an inspection of a dental office for a practice in which there has been unprofessional conduct or patient harm by a licensee. There would be no disadvantages.
- 2) There are no disadvantages to the agency or the Commonwealth. The advantage of setting the fee in regulation would be less confusion about the fee or its amount. Rather than stating the amount of a fee in the order, it could require the licensee to pay the inspection fee required in

section 30 of the regulations. Currently, some orders continued to include a \$200 inspection fee, even after the Board voted in 2006 to increase the fee to \$350.

3) There is no other pertinent matter of interest related to this action.

Economic impact

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The agency will incur some one-time costs (less than \$1,000) for mailings and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings or distribute notices by email. There are no ongoing expenditures related to this amendment. As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals who may be affected would be dentists who are subject to a disciplinary proceeding that necessitates an inspection of the dental practice.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>It is estimated that the orders for 22 dentists have included a requirement for an inspection of their offices within the past two years. All would be considered small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There would be a \$350 fee relating to this regulation for the affected entities.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The alternative to a regulatory action would be to continue stating an inspection fee in the order issued by the Board in a disciplinary action. The Board believes the inclusion of the fee in regulation would be advantageous because the order could refer to a fee established by rule. If

the rule is amended to increase or decrease the fee, the fee charged to the licensee at the time of the inspection would be the fee in effect in regulation at that time. There would be less confusion with a stated fee.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There should be no effect on the family as a result of this action.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
30	n/a	Sets fees (other than renewal) for licensees of the Board.	<p>Adds a \$350 fee for a required inspection of a dental office.</p> <p>Costs incurred for the inspection of a dental office should be borne by the dentist who has been the subject of a disciplinary order by the Board and not the licensees who are following the law and practicing competently and ethically. The fee of \$350 was determined to be necessary to cover the expenses of inspectors from the Enforcement Division of the Department of Health Professions for the amount of time it takes to inspect the office. The fee was included in the revenue and expenditure projections for FY07 and 08, on which the Board based the adoption of an amended fee schedule in 2006. Even with the increased fees, which became effective January 10, 2007, the Board's continues to be in a deficit. Projected revenue from inspections each fiscal year is necessary to continuing to eliminate the deficit.</p>

